

REMARKS

The issues outstanding in the Office Action mailed April 21, 2003, are the claims for priority, and the rejections under 35 U.S.C §101, 112 and 102. Reconsideration of each of these issues, in view of the following discussion, is respectfully requested.

Claim for Benefit

At page 2 of the Office Action, the Applicant is requested to add a benefit claim to the International Application corresponding to the present National Phase Application. It is respectfully submitted that such a benefit claim would be improper. A "benefit" claim is not needed, in as much as this application is not a "continuing" application of the International case, but is, indeed, the same application. Benefit claims are needed only for priority under 35 U.S.C. § 119 or 120, not in the present situation.

Rejection Under 35 U.S.C §101

Claims 1-11 have been rejected under 35 U.S.C §101 due to the recitation of "use" terminology. The claims have been reformatted for U.S. practice, and is submitted that this issue is moot. Withdrawal of the rejection is therefore respectfully requested.

Rejection Under 35 U.S.C §112

Claims 1-11 have been rejected under 35 U.S.C §112, second paragraph. The Examiner's attention to these claims is appreciated, and various typographical and grammatical amendments have been made to the claims. These amendments do not change the scope of the claims, either literally or for purposes of the Doctrine of Equivalents. It is noted that, with respect to the "and/or" terminology, the clarifying amendments are submitted to render the usage of these terms unambiguous, and that the claims fully satisfy the requirements of the second paragraph of the statute. Withdrawal of the rejection is therefore respectfully requested.

Rejection Under 35 U.S.C §102

Claims 1-11 have been rejected under 35 U.S.C §102(b) over Brand, et. al..

Reconsideration of this rejection is respectfully requested. As noted at page 3 of the Office Action, Brand teaches pigments which are usable in cosmetics, plastics, lipstick, soap, glass, ceramics, varnishes, paints, and rubber. See column 6, line 70, through column 7, line 1. Patentees moreover disclose the use of their pigments and the coloring of road markers, road signs, children's toys, wall coverings, and for the production of advertising effects. See column 11, lines 29-30. The use examples of the patent disclose injection-molded polyethylene, polyester sheets for buttons, polystyrene beads, lipstick and soap. See examples 8-12. Thus, Patentees fail to disclose the use of their pigments for coloring foodstuffs or pharmaceuticals. It is respectfully submitted that the use of colorants in the pharmaceutical and foodstuff arts is simply not suggested by the Patentees' use of the pigments in the production of non-ingestibles, in view of the additional requirements which must be imposed on foodstuffs or pharmaceuticals, including safety and ingestibility. Thus, it is submitted that the patent fails to anticipate the present claims, and withdrawal of the rejection is respectfully requested.

Claims 1, 2, 6, 10 and 11 have also been rejected under 35 U.S.C §102(b) over Noguchi, et. al.. Reconsideration of this rejection is also respectfully requested. Noguchi teaches the use of pigments in the production of cosmetics, automobile paints, printing inks, appliance paints, building paint and urushi (a type of Japanese lacquer), see column 1, lines 60-62. Importantly, Patentees teach the use of their materials in combination with various *dyes*. See column 2, lines 54 through column 3, line 56. Patentees' examples use organic pigments and phthalocyanine, which would be expressly unsuitable for the use in ingestibles. Thus, it is quite evident that, as with Brand, Patentees fail to anticipate, much less suggest, the use of their pigments in pharmaceuticals or foodstuffs. Withdrawal of this rejection is also respectfully requested.

Claims 1-3, 5-8 and 10 have also been rejected under 35 U.S.C §102(b) over Bernhard. Reconsideration of this rejection is also respectfully requested, in as much as Bernhard discloses pigmenting button panels, resins, cosmetics, lipstick, soap, glass, ceramics, varnish, paint or rubber. See column 5, lines 9-27. Patentees thus fail to disclose or suggest the use of their pigments in ingestibles such as foodstuffs or pharmaceuticals. (It is unclear from the Office

Action whether Bernhardt '890 or Bernhardt '983 is intended in this rejection. However, neither of these patents discloses or suggests the present claims.) Moreover, Bernhardt '983 disclosing the preparation of plastic, paint, enamel, lacquer, or cosmetics at column 10, lines 21-42, does obliquely mention foodstuff dye, at column 3, line 49. However, this disclosure clearly falls far short of suggesting the preparation of an ingestible material such as a foodstuff or pharmaceutical, by the mere indication that the process of the patent could be "used with a plurality of dyestuffs, including but not limited to foodstuff dye." Indeed, it is clear that the patent discloses the preparation of materials which are *not* suitable for the use of ingestibles, in as much as Patentees disclose the use in the invention of a wide variety of non-ingestible materials such as azo dyes and lake pigments. See, for example, column 1, lines 52-56 and column 2, lines 24-27. Thus, neither of the Bernhardt patents discloses materials which encompass or suggest the present claims. Withdrawal of this rejection is also respectfully requested.

Claims 1-3, 5-8 and 10-11 have also been rejected under 35 U.S.C §102(b) over Linton. Reconsideration of this rejection is also respectfully requested. As with the above discussed references, Linton discloses the preparation of paints, printing inks, plastic films and rubber, see column 11, lines 54-63. In Patentees' utility examples, material wholly unsuitable for foodstuffs are disclosed; for example, lacquers containing hydrocarbon solvents such as ketones or toluene, and containing phthalocyanine. See examples XXI and XXII. Thus, Linton also completely fails to disclose or suggest the present claims, and withdrawal of this rejection is respectfully requested.

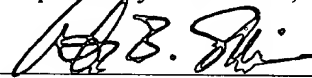
Claims 1, 2 and 6 have been rejected under 35 U.S.C §102(b) over Ahmed, et. al. or Bernhard, et. al. Again, the Office Action does not indicate which Bernhard patent is intended. Reconsideration of this rejection is also respectfully requested, in as much as Ahmed discloses "laking" nacreous pigments with a dye. As discussed above, such would be unsuitable for foodstuffs. Both Bernhard patents were discussed above. Accordingly, withdrawal of this rejection is also respectfully requested.

In conclusion, it is respectfully submitted that the cited references fail to anticipate or suggest the present claims, and the claims are submitted to be in condition for allowance. Should

the Examiner have any questions or comments, he or she is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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